

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DANA JOHNSON**

Claimant

VS.

**SHAWNEE COUNTY**

Respondent,  
Self-Insured

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Docket No. 247,717

**ORDER**

The respondent appealed the October 7, 1999 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

This is a claim for a July 7, 1999 accident and resulting injury to the left knee and low back. Judge Benedict found that claimant injured both his left knee and back in the July 1999 accident and awarded claimant benefits.

The respondent contends the Judge erred by finding that claimant injured his low back in the accident. The respondent argues that claimant has longstanding back problems and that his present low back complaints are due to non-work-related activities.

Conversely, the claimant contends that he injured his left knee and low back on July 7, 1999, jumping over a hole while responding to a call for assistance. Claimant contends that he felt a twinge in his back at the time of the incident and that his back symptoms gradually worsened over the next several weeks until he was experiencing excruciating back pain and pain radiating down his left leg.

The only issue before the Appeals Board on this appeal is whether claimant injured his low back in the July 7, 1999 accident.

**FINDINGS OF FACT**

After reviewing the record compiled to date, the Appeals Board finds:

1. Mr. Dana Johnson is an operations lieutenant employed by the Shawnee County Department of Corrections. On July 7, 1999, while responding to a co-worker's call for assistance, Mr. Johnson jammed his left leg jumping over a large hole. At the time of the incident, Mr. Johnson felt severe pain in his left knee and a slight twinge in his low back. Shawnee County stipulates that the incident occurred resulting in the left knee injury. But the County contests the alleged low back injury.

2. For several years before this accident, Mr. Johnson experienced intermittent minor low back pain for which he sought chiropractic treatment. After such treatment, Mr. Johnson's symptoms would resolve. In 1994, Mr. Johnson reported to his chiropractor that he was having low back pain and pain going down the front of his thighs in both legs. Within seven days, those leg symptoms also resolved.

3. The day following the accident, Mr. Johnson sought medical treatment for the left knee pain at a local hospital's emergency room. On the day following the accident, Mr. Johnson also went to a chiropractor for his back. In the weeks following the accident, Mr. Johnson's back pain gradually worsened and he began experiencing pain down into his left leg into his toes. On August 15, 1999, Mr. Johnson returned to the hospital emergency room because of his back and leg symptoms.

4. A CT scan was done on August 18, 1999. That study shows a disc protrusion and possible herniations at both the L4-5 and L5-S1 intervertebral levels.

5. The Judge found that Mr. Johnson injured his back in the July 1999 accident and the Appeals Board agrees. The greater weight of the evidence indicates that Mr. Johnson at least aggravated his low back on July 7, 1999, and that his low back and leg symptoms have worsened since that time.

#### **CONCLUSIONS OF LAW**

1. The preliminary hearing Order should be affirmed.

2. An injury is compensable under the Workers Compensation Act where the accident only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident caused the condition, but whether the accident either aggravated or accelerated a preexisting condition.<sup>2</sup>

3. For preliminary hearing purposes, Mr. Johnson has established that he either aggravated or injured his low back while working for Shawnee County on or about July 7,

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<sup>1</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

1999. And that accident arose out of and in the course of Mr. Johnson's employment with Shawnee County. Therefore, he is entitled to receive workers compensation benefits for that accident and the resulting injuries to his left knee and low back.

4. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the October 7, 1999 preliminary hearing Order entered by Judge Benedict.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

c: Mitchell D. Wulfekoetter, Topeka, KS  
Jeff K. Cooper, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director

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<sup>3</sup> K.S.A. 1998 Supp. 44-534a(a)(2).